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MEMORANDUM

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Arizona Corporation Commission

FROM: Steven M. Olea
Director
Utilities Division

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JAN 29 2010

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AT CORP COMMISSION
DOCKET CONTROL

DATE: January 29, 2010

RE: WILHOIT WATER COMPANY, INC. – THUNDERBIRD MEADOWS SYSTEM
REQUEST FOR EXTENSION OF TIME OF COMPLIANCE ITEM (DOCKET
NOS. W-02065A-07-0306, W-02065A-07-0307, W-02065A-07-0312, AND
W-02065A-08-0138

In Decision No. 71234, dated August 6, 2009, the Arizona Corporation Commission (“Commission”) approved the application of Wilhoit Water Company, Inc. – Thunderbird Meadows System (“Wilhoit – Thunderbird Meadows” or “Company”) for a permanent rate increase and financing.

On May 21, 2007, the Company filed multiple dockets, three of which were consolidated and ultimately addressed in Decision No. 71234. It is the required Approval to Construct (“ATC”) from the Docket No. W-02065A-07-0307 financing that is the subject of this application.

As part of Decision No. 71234, the Commission ordered that Wilhoit – Thunderbird Meadows file:

“...by December 31, 2009, with the Commissions Docket Control, as a compliance item in this docket, a copy of the ADEQ ATC for the plant related to the Company’s development of new storage capacity.”

Decision No. 71234 also ordered that when the Water Infrastructure Finance Authority (“WIFA”) approved the long-term financing for the Company, “Staff shall calculate the actual surcharge” and file the appropriate surcharge amount for collection from customers. As such, there is a pending, and as yet uncalculated, surcharge which has been arranged to account for the dollar amounts necessary revenue relating to this financing.

On December 11, 2009, Wilhoit – Thunderbird Meadows docketed a filing with the Commission, requesting an extension of time from the current December 31, 2009 due date, until May 1, 2010, for the provision of the required ATC. The Company stated that it only recently received notification that its application for a loan with WIFA was approved. However, the loan must still be closed and these loan funds are patently necessary for construction of the additional storage. Finally, the Company states that “because of the delay

in obtaining financing and the uncertainty of the ADEQ review process, the Company respectfully requests an extension of time to file the ATC until May 1, 2010."

On January 8 and 11, 2010, Staff contacted WIFA and spoke with Ms. Judy Navarrete, Executive Director, and Ms. Angie Valenzuela, Senior Loan Officer to discuss the Wilhoit – Thunderbird Meadows System request for extension of time. Ms. Valenzuela stated that the Company's loan application went to the WIFA Board of Directors and was approved on October 14, 2009. Since the loan was approved, the loan documents were sent to the Company on November 9, 2009. However, Ms. Navarrete noted that the loan closing has not taken place. Typically, the loan documents are reviewed by the Company and must be agreed to before closing can take place. Ms. Navarrete stated that the Environmental Protection Agency now has new labor law requirements, relating to the Davis-Bacon Act, which the Company must allot for and include in the Company's construction contracts. Ms. Navarrete implied that this would add additional time to the processing of the loan paperwork and the closing of the loan.

On January 8, 2010, Staff contacted Mr. Jim West, Company consultant, to discuss the Company's request for extension of time and the processing of the loan closing. Mr. West stated that the approval was received from WIFA but the remainder of the entire process has been compromised by the effects of the Davis-Bacon Act. Mr. West went on to clarify that, in addition to increasing the loan processing and closing time, he expects the requirements of the Davis-Bacon Act to increase the actual costs associated with the storage project by approximately 15-20 percent. These costs were not considered when the Company received loan approval from the Commission in Decision No. 70953 and he stated that the Commission authority is no longer technically sufficient for the project. Mr. West has commented that he has been waiting on information from Staff to determine the appropriate action to take in order to address the pending shortfall in the Commission authorization.

When viewing the application and considering the previous decision, Staff became concerned about the Company's ability to see this loan finalized and the construction completed. The Company application requested an extension of time until May 1, 2010, for the provision of the required ATC. In order to meet that new date, the Company would still need to complete closing on the loan, contract with an engineering firm, see engineering plans completed and apply for and receive the ATC – all within a little more than three months. The Company faces a difficult task that may not be easily accomplished.

Mr. West concurred that the financing originally approved for the Wilhoit – Thunderbird Meadows was approved utilizing a surcharge mechanism that was to be calculated when the loan was finalized. While it is the Company's responsibility to consider and decide on the appropriate action, if the original authority/funding was organized via a surcharge mechanism, a solution is available. Staff believes that the Company should file, if needed, an additional loan application for the possible incremental increase in authority required. If the additional loan amount is approved by the Commission, then the required surcharge calculation would be made to address the new, higher authorization amount. The Company is responsible for considering its options, but some option should be selected and implemented quickly.

On January 28, 2010, Staff again contacted Mr. West to discuss the fact that the Company's application sought an extension of the ATC due date but did not seek a corresponding extension of the Approval of Construction ("AOC") due date ordered in the same decision. Mr. West commented that a corresponding extension of the AOC would indeed be a necessary addition to the application. Staff accepted this as a verbal amendment to the December 11, 2009 application for extension of time, and conducted its review and developed its recommendation with the inclusion of these comments from Mr. West.

Staff concludes that the swift processing of the WIFA loan is a vital and necessary element in the Company completing the construction and providing the ATC (and the AOC) to the Commission. Staff therefore does not object to the Company proposal for extension of time for provision of the ATC related to the new storage capacity and, in fact, recommends that a corresponding extension of time be granted for the AOC.

Based on all of the above, Staff recommends that the Commission extend the due dates for the Wilhoit – Thunderbird Meadows ATC and AOC until December 31, 2010 and May 1, 2011, respectively. This should provide the Company with sufficient time to complete the project. Staff further recommends that no further extensions be granted in this matter.

SMO:BKB:lhv

Originator: Brian K. Bozzo

SERVICE LIST FOR:
DOCKET NOS.

WILHOIT WATER COMPANY, INC.
W-02065A-07-0306, W-02065A-07-0307, W-2065A-07-0312 and
W-02065A-08-0138

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